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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON**

**WASHINGTON TROUT,**

CV-05-203-RHW

Plaintiff,

v.

**DEFENDANTS' ANSWER TO  
COMPLAINT**

**LEAVENWORTH NATIONAL FISH  
HATCHERY; UNITED STATES FISH AND  
WILDLIFE SERVICE; GALE NORTON; U.S.  
ENVIRONMENTAL PROTECTION  
AGENCY; and STEPHEN L. JOHNSON,**

Defendants.

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Defendants hereby answer the Complaint. The numbered paragraphs below correspond to the numbered paragraphs of the Complaint.

**INTRODUCTION**

1. Paragraph 1 consists of Plaintiff's characterization of its case, to which no response is required. To the extent that any response may be deemed required, Defendants deny

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the allegations.

2. Paragraph 2 consists of Plaintiff's characterization of its case, to which no response is required. To the extent that any response may be deemed required, Defendants deny the allegations.

3. Paragraph 3 consists of Plaintiff's characterization of its case, to which no response is required. To the extent that any response may be deemed required, Defendants deny the allegations.

#### **JURISDICTION AND VENUE**

4. The allegations in paragraph 4 of the Complaint constitute legal conclusions to which no response is required.

5. Defendants Environmental Protection Agency ("EPA"), EPA Administrator Stephen L. Johnson, and United States Fish and Wildlife Service ("FWS") admit they received notice of intent to sue more than 60 days prior to the filing of the Complaint. Defendants are without sufficient knowledge to admit or deny that the Attorney General was served with a copy of the notice letter, and denies this allegation on that basis. The remaining allegations of the last two sentences of Paragraph 5 characterize this action and contain legal conclusions; thus, do not require a response. To the extent that any response may be deemed required, Defendants deny the allegations. Defendants admit the notice letter is attached to the Complaint as Exhibit A.

6. The allegation in paragraph 6 of the Complaint constitutes a legal conclusion to which no response is required.

#### **DEFENDANTS' ANSWER**

## PARTIES

7. Defendants are without sufficient knowledge or information to admit or deny the allegations of paragraph 7.

8. Defendants are without sufficient knowledge or information to admit or deny the allegations of paragraph 8. The final sentence of paragraph 8 contains a legal conclusion, to which no response is required.

9. The allegation in the first sentence of paragraph 9 of the Complaint constitutes a legal conclusion to which no response is required. Defendants are without sufficient knowledge or information to admit or deny the remaining allegations of paragraph 9. The final sentence of paragraph 9 contains a legal conclusion, to which no response is required.

10. Defendants admit the allegations of the first sentence of paragraph 10. The final sentence of paragraph 10 contains a legal conclusion, to which no response is required.

11. The allegations of the first sentence of paragraph 11 constitute legal conclusions to which no response is required. Defendants admit the allegations of the second sentence of paragraph 11 to the extent that the USFWS operates the Leavenworth National Fish Hatchery, but aver that the United States owns the hatchery.

12. Defendants admit the allegations of the first sentence of paragraph 12, but aver that the correct spelling of the Secretary of the U.S. Department of the Interior's name is Gale Norton, not Gail Norton. The allegation of the second sentence of Paragraph 12 consists of plaintiff's characterization of its case, to which no response is required.

13. Defendant EPA admits that it is the federal agency charged with administering the

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Clean Water Act. Defendant EPA admits that it issued the 1974 permit to Defendant Leavenworth National Fish Hatchery. The remaining allegation of the last sentence of Paragraph 13 both characterizes this action and contains a legal conclusion; thus, no response is required.

14. Defendant Stephen L. Johnson admits that he is the Administrator of EPA. The allegation of the second sentence of Paragraph 14 consists of Plaintiff's characterization of its case, to which no response is required.

#### **GENERAL ALLEGATIONS**

15. The allegations in paragraph 15 of the Complaint constitute legal conclusions to which no response is required.

16. The allegations in paragraph 16 of the Complaint constitute legal conclusions to which no response is required.

17. The allegations in paragraph 17 of the Complaint constitute legal conclusions to which no response is required.

18. The allegations in paragraph 18 of the Complaint constitute legal conclusions to which no response is required.

19. The allegations in paragraph 19 of the Complaint constitute legal conclusions to which no response is required.

20. Defendants admit the allegations of the first sentence of paragraph 20. The allegations of the second sentence of paragraph 20 constitute legal conclusions to which no response is required.

21. Defendants admit the factual allegations of Paragraph 21.

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22. The allegation of the first sentence of paragraph 22 constitutes a legal conclusion to which no response is required. Defendants deny the allegations of the second and third sentences of paragraph 22. Defendants are without sufficient knowledge or information to admit or deny the allegations of the fourth sentence of paragraph 22.

23. Defendants admit the allegations in paragraph 23.

24. The document characterized in paragraph 24 speaks for itself, and the document, if relevant to this action, should be referred to in its entirety for the best evidence of its content.

25. The document characterized in the first sentence of paragraph 25 speaks for itself, and the document, if relevant to this action, should be referred to in its entirety for the best evidence of its content. The remaining allegations of Paragraph 25 contain conclusions of law; thus, require no response.

26. The document characterized in paragraph 26 speaks for itself, and the document, if relevant to this action, should be referred to in its entirety for the best evidence of its content.

27. Defendants denies that the United States has not taken any action on the hatchery's 1980 permit renewal application. To the extent that the first sentence contains a characterization of the Plaintiff's claim, no response is necessary. The remaining allegations in paragraph 27 characterize Plaintiff's action and contain legal conclusions, and thus require no response.

28. The allegations of the first sentence of paragraph 28 constitute legal conclusions to which no response is required. Defendants deny the allegations of the second sentence of paragraph 28. With respect to the allegations of the third sentence of paragraph 28, the phrase

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"other pollutants" is vague and imprecise, making impossible any response to the allegations of that sentence.

29. The allegations in paragraph 29 of the Complaint constitute legal conclusions to which no response is required.

#### CAUSES OF ACTION

30. The allegations in paragraph 30 of the Complaint constitute legal conclusions to which no response is required.

31. The allegations in paragraph 31 of the Complaint constitute legal conclusions to which no response is required.

32. The allegations of paragraph 32 constitute legal conclusions to which no response is required.

33. Paragraph 33 consists of plaintiff's characterization of its case to which no response is required.

34. The allegations in the first sentence of paragraph 34 of the Complaint constitute legal conclusions to which no response is required. Defendants deny the allegations of the second sentence of paragraph 34.

35. Defendants deny the allegations of paragraph 35.

36. Paragraph 36 consists of plaintiff's characterization of its case, to which no response is required.

37. The allegations in paragraph 37 consist of legal conclusions to which no response is required.

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38. The allegations in paragraph 38 consist of legal conclusions to which no response is required.

39. The first two sentences of paragraph 39 consist of legal conclusions to which no response is required. The remaining allegation of the last sentence of paragraph 39 characterizes this action and contains a legal conclusion and therefore requires no response.

40. The allegations in paragraph 40 consist of legal conclusions to which no response is required.

41. The allegations in paragraph 41 consist of legal conclusions to which no response is required.

42. The allegations in paragraph 42 consist of legal conclusions to which no response is required.

#### **PRAYER FOR RELIEF**

The remaining paragraphs of the Complaint constitute plaintiff's prayer for relief, to which no response is required, but to the extent that a response is required, defendants deny that plaintiff is entitled to any of the relief requested.

#### **GENERAL DENIAL**

Defendants deny every allegation of the Complaint which is not expressly admitted or otherwise herein addressed.

#### **DEFENSES**

##### **First**

Plaintiff fails to state a claim on which relief may be granted.

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**Second**

One or more of Plaintiff's claims may be barred by the statute of limitations and/or the doctrine of laches.

**Third**

Plaintiff lacks standing to present these claims.

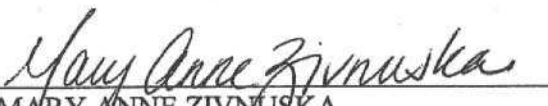
WHEREFORE, Defendants respectfully request that the Court grant defendants the following relief:

1. Enter judgment in favor of defendants, and against plaintiff, and dismiss this action; and
2. Any further and other relief that the Court may deem appropriate.

Respectfully submitted,

Dated: September 12, 2005

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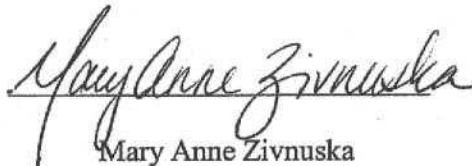


**CERTIFICATE OF SERVICE**

I hereby certify that on September 12, 2005, service of the Defendant United States of America's Answer was accomplished through electronic filing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to:

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Dated at Washington, DC this 12th day of September, 2005.

  
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